

§ 73.735–1304

(b) An employee who believes that he or she has been threatened with a personnel action, any other action, or harassment or has been harmed by any action as a reprisal for having made a complaint or providing information pursuant to § 73.735–1301 or § 73.735–1302 may request the Office of the Inspector General to review his or her allegations. Whenever the Inspector General has reason to believe that the allegations may be true, he or she will refer the matter to the Assistant Secretary for Personnel Administration for appropriate action. The Assistant Secretary for Personnel Administration may order a stay of any personnel action if he or she determines that there are reasonable grounds to believe that the personnel action is being taken as a reprisal for making a complaint or providing information pursuant to § 73.735–1301 or § 73.735–1302.

§ 73.735–1304 Referral of matters arising under the standards of this part.

(a) The Department Ethics Counselor may refer to the Inspector General for investigation and/or further action any matter arising under the standards of this part.

(b) The Department Ethics Counselor may refer to the Office of Government Ethics, or the Inspector General may refer to the Department of Justice, suspected violations of the criminal laws regarding employee standards of conduct and conflicts of interest.

Subpart N—Conduct and Responsibilities of Former Employees

§ 73.735–1401 Prohibitions against post-employment conflicts of interest.

(a) The purpose of criminal prohibition in 18 U.S.C. 207 is to prevent the unfair use of inside knowledge or influence that results from Federal service. 18 U.S.C. 207 generally prohibits a former employee from acting as another person's representative to the Government in particular matters involving a specific party or parties in which the employee had been involved while in Federal service. This prohibition does not require a former employee to decline employment with any

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organization regardless of his or her dealings with that organization while employed by the Government. It applies solely to activities, not the mere existence of an employment arrangement.

(b) The Office of Government Ethics, Office of Personnel Management, has issued Government-wide regulations covering post-employment conflict of interest (5 CFR Part 737). Those regulations are incorporated herein by reference, and they are available for review in personnel offices throughout the Department.

APPENDIX A TO PART 73—LIST OF SOME OFFENSES FOR WHICH DISCIPLINARY ACTION MAY BE TAKEN

Following is a list of some offenses for which disciplinary action may be taken under this Part. When a statute applies specifically to a particular offense, either wholly or in part, the statute is cited. Neither the list of offenses nor the statutory citations are all-inclusive. The “Code of Ethics for Government Service” is not cited because of its general applicability but is published in its entirety in Appendix B.

A. *Concerning Efficiency of Operations in General.* 1. Engaging in wasteful actions or behavior in the performance of assigned duties; conducting non-Government business during official work hours; or participating in a strike (18 U.S.C. 1918), work stoppage, slowdown, sickout, or other similar action.

2. Absence without leave, failure to adhere to the rules and regulations for requesting and obtaining leave, or improper use of sick leave.

3. Deliberate insubordination or refusal to carry out lawful orders or assignments given.

4. Disruptive behavior, such as:

a. Inflicting or threatening or attempting to inflict bodily injury on another (except for necessary defense of self or others) while on the job or on Federal premises.

b. Discourtesy, disreputable conduct, or use of insulting, abusive or obscene language to or about other individuals while on the job.

5. Sexual harassment of employees or members of the public.

6. Failure to observe precautions for safety, such as failure to use safety equipment when it is provided or ignoring signs, posted rules or regulations, or written or verbal safety instructions.

7. Unauthorized use, possession, or distribution of alcoholic beverages (5 U.S.C. 7352) or controlled substances (e.g., hallucinogens, such as LSD; stimulants, such as cocaine and amphetamines; sedatives,

such as barbiturates; narcotics and other drugs or substances, such as hashish and other cannabis substances).

8. Unauthorized gambling; or canvassing, soliciting, or peddling on Government premises.

9. Failure to carry or show proper identification or credentials as required by competent authority; misuse of identification cards or investigative or identification credentials or badges.

10. Failure to disclose (i.e., report) information, when such disclosure is not specifically prohibited by law or Executive Order, that involves (a) violation of law, rule, or regulation, (b) mismanagement or gross waste of funds or abuse of authority, or (c) posing a substantial and specific danger to public health or safety; failure to cooperate in an official Department inquiry.

11. Failure to pay just debts, including taxes to and loans from governmental sources.

12. Deceit or interference in a Civil Service examination (18 U.S.C. 1917) or in connection with a Government personnel action.

13. Fraud or false statements in a Government matter. (18 U.S.C. 1001 through 1003.)

14. Supervisory failure to initiate disciplinary or corrective action when the facts are known and disciplinary or corrective action is warranted.

15. Employment of a member of an organization that advocates the overthrow of our constitutional form of government. (5 U.S.C. 7311; 50 U.S.C. 784.)

B. Concerning Government Funds, Property, Documents, and Records. 1. Actual or attempted embezzlement or theft of Government or personal money or property either directly or through use of Government documents, automated equipment, or other means; actual or attempted embezzlement or theft of the money or property of another person in the possession of an employee by reason of his or her employment. (18 U.S.C. 641 and 654.)

2. Failure to account for public money. (18 U.S.C. 643.)

3. Deliberate falsifying of official time and attendance records; improper use of official travel or forging, counterfeiting, or otherwise falsifying official Government travel records or documents. (18 U.S.C. 508.)

4. False record entries or false reports of money or securities. (18 U.S.C. 2073.)

5. Loss or misuse of or damage to Government property or endangering persons or Government property through carelessness or by willful malicious conduct.

6. Mutilating, destroying, or concealing public records. (18 U.S.C. 2071.)

7. Misuse of penalty (postal) privilege. (18 U.S.C. 1719.)

8. Failure to safeguard administratively confidential, financial, and trade secrets information.

9. Unauthorized use of documents presented or used to procure the payment of money from or by the Government. (18 U.S.C. 285.)

10. Unauthorized use of a Government vehicle; serious or repeated violations of traffic regulations while driving a Government vehicle or a vehicle rented or leased for official Government purposes; reckless driving or improper operation of any Government owned, rented, or leased motor vehicle. (31 U.S.C. 1349[b].)

11. Violations of the Privacy Act, including:

a. Willful prohibited disclosure of individually identifiable information in violation of 5 U.S.C. 552a.

b. Willfully maintaining a system of records without meeting the notice requirements of the Privacy Act as required by 5 U.S.C. 552a.

12. Violation of regulations concerning the release of classified information, confidential, or security and investigative information. (18 U.S.C. 798 and 1905; 21 U.S.C. 331j; and 50 U.S.C. 783.)

C. Concerning Conflicts of Interest and Related Unethical Conduct: 1. Violations of 18 U.S.C. Chapter 11: Bribery, Graft, and Conflicts of Interest, including:

a. Having a direct or indirect financial interest (includes employee ownership of stocks, bonds, or partnership interests in an entity or employment of the employee, his or her spouse, or dependent child) that conflicts with one's Government duties because such entity is either regulated by, has or seeks to do business with the agency, or has any other particular matter with or pending before the agency that may give rise to either an actual conflict or the appearance thereof. (18 U.S.C. 208.)

b. Bribery of a public official; soliciting or accepting directly or indirectly anything of monetary value, including gifts, gratuities, favors, entertainment, or loans either as compensation for governmental services or from individuals who are seeking contractual or other business or financial relations with the Department, are conducting operations or activities that are regulated by the Department, or have interests that may be substantially affected by the performance or nonperformance of the employee's official duties; receiving salary or any contribution to or supplementation of salary from a private source as compensation for services for the Government. (18 U.S.C. 201 and 209.)

c. Acting as the agent of a foreign principal registered under the Foreign Agents Registration Act. (18 U.S.C. 219.)

2. Engaging, directly or indirectly, in a financial transaction as a result of or primarily relying on information that is obtained through one's official duties and would not be available were the employee not an employee of the Federal Government.

3. Soliciting a contribution from another employee for a gift to an official superior, making a donation as a gift to an official superior, or accepting a gift from an employee receiving less pay than oneself. (5 U.S.C. 7351.)

4. Engaging, without required permission, in outside activities that result in or create the appearance of a conflict of interest.

5. Teaching, lecturing, or writing that depends on specific information obtained as a result of one's Government employment when that information is not otherwise available to the public.

6. Failure to obtain required clearance of an official speech or article.

7. Lobbying with appropriated funds. (18 U.S.C. 1913.)

8. Representation before a Federal agency (other than in the proper discharge of one's official duties) as an agent or attorney in a claim against the United States (or receiving any gratuity or share in any such claim in consideration for assistance given) or as an agent or attorney for anyone before any department, agency, court, or otherwise in connection with any proceeding, application, request for a ruling, or claim on any other particular matter in which the United States is a party or has a direct and substantial interest. (18 U.S.C. 205.) (Note: This section notwithstanding, an employee may, if not inconsistent with the performance of his or her official duties, act without compensation as an agent or attorney for another person who is the subject of any disciplinary or other administrative proceeding or as an agent or attorney for one's parent, spouse, child, or any person or estate for whom or which he or she serves as personal fiduciary except in those matters in which the employee has participated personally and substantially.)

D. Concerning Prohibited Political and Election Activities. 1. Activities prohibited by 5 U.S.C. Chapter 73, Subchapter III, including:

a. Section 7323, "Political contributions; prohibition."

b. Section 7324, "Influencing elections; taking part in political campaigns; prohibitions; exceptions."

2. Activities prohibited by 18 U.S.C. Chapter 29, including:

a. Section 594, "Intimidation of voters."

b. Section 597, "Expenditures to influence voting."

c. Section 598, "Coercion by means of relief appropriations."

d. Section 600, "Promise of employment or other benefit for political activity."

e. Section 601, "Deprivation of employment or other benefit for political contribution."

f. Section 602, "Solicitation of political contributions."

g. Section 604, "Solicitation from persons on relief."

h. Section 606, "Intimidation to secure political contributions."

E. Concerning Prohibited Personnel Practices.

1. Commission of a prohibited personnel practice (as defined in 5 U.S.C. 2302[b] [1–11]); that is, any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, commit any of the following practices:

a. Discriminate for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.

b. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of (1) an evaluation of the work performance ability, aptitude, or general qualifications of such individual or (2) an evaluation of the character, loyalty, or suitability of such individual.

c. Coerce the political activity of any person (including the providing of any political contribution or service) or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.

d. Deceive or willfully obstruct any person with respect to such person's right to compete for employment.

e. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.

f. Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

g. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 3110) when the civilian position is in the Department or under his or her jurisdiction or control.

h. Take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for the lawful disclosure of information.

i. Take or fail to take any personnel action against an employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation (including HHS Instructions and issuances).

j. Discriminate for or against any employee or applicant for employment on the

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basis of conduct that does not adversely affect the performance of the employee or applicant or the performance of others (except criminal conviction in determining suitability or fitness).

k. Take or fail to take any personnel action when the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning the merit system principles (as set forth in 5 U.S.C. 2301).

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APPENDIX B TO PART 73—CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

II. Uphold the Constitution, laws, and regulations of the United States and all governments therein and never be a party to their evasion.

III. Give a full day's labor for a full day's pay, giving earnest effort and best thought to the performance of duties.

IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

VI. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

VII. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.

VIII. Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust.

[53 FR 4410, Feb. 16, 1988]

PART 73a—STANDARDS OF CONDUCT: FOOD AND DRUG ADMINISTRATION SUPPLEMENT

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73a.735–1004 Submission and review of statements.

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SOURCE: 43 FR 7619, Feb. 24, 1978, unless otherwise noted.

Subpart A—General Provisions

§ 73a.735–101 Principles and purpose.

(a) To assure that the business of the Food and Drug Administration (FDA) is conducted effectively, objectively, and without improper influence or appearance thereof, all employees must be persons of integrity and observe the highest standards of conduct. Because of FDA's special regulatory responsibilities to the consumer and industry, its employees must be especially alert to avoid any real or appearance of conflict of their private interests with their public duties. Their actions must be unquestionable and free from suspicion of partiality, favoritism, or any hint of conflicting interests. This supplement recognizes FDA's public obligation to set reasonable and fair safeguards for the prevention of employee conflicts of interest. It is necessary to meet FDA's regulatory responsibilities and to otherwise assure full protection of the public confidence in the integrity of its employees.

(b) Since FDA is a unique consumer protection and regulatory agency within the Department, the DHHS Standards of Conduct need further supplementation to reflect this role.